



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Mr. Mark Belton, Administrator  
Charles County  
200 Baltimore Street  
La Plata, Maryland 20646

OCT 14 2014

Re: Administrative Penalty Complaint and Notice of Opportunity to Request Hearing

Dear Mr. Belton:

The United States Environmental Protection Agency ("EPA") inspected Charles County's Municipal Separate Storm Sewer System (MS4) Program to assess its compliance with Maryland Department of the Environment (MDE) permit MD0068365. EPA has determined that Charles County is in violation of Federal regulations at 40 C.F.R. § 122.34 and its Permit because it failed to inspect its stormwater management facilities on a triennial basis.

Enclosed with this letter is a document entitled Administrative Penalty Complaint and Notice of Opportunity to Request Hearing issued pursuant to Section 309(a) of the Federal Clean Water Act ("Act"), 33 U.S.C. § 1319(a). This document contains findings that Charles County has violated Section 301 of the Act, 33 U.S.C. § 1311. If you require any information or assistance regarding this matter, please contact Mr. Andrew Duchovnay, Office of Regional Counsel, 215-814-2484.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jon M. Capacasa", is written over a circular blue ink stamp.

Jon M. Capacasa, Director  
Water Protection Division

Enclosure

cc: Brian Clevenger, MDE  
Peter Aluotto, Charles County



RECEIVED

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III

1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029

2014 OCT 16  
REGIONAL HEARING CLERK  
REGION III, PHILA. PA.

In the Matter of:

Proceeding to Assess Class II  
Administrative Penalty Under  
Section 309(g) of the Clean Water  
Act

Charles County, Maryland

Docket No. CWA-03-2015-0013

Respondent.

**ADMINISTRATIVE PENALTY  
COMPLAINT  
AND NOTICE OF  
OPPORTUNITY TO  
REQUEST HEARING**

**I. STATUTORY AUTHORITY**

1. Pursuant to Section 309(g) of the Clean Water Act ("CWA" or "Act"), 33 U.S.C. § 1319(g), the Administrator of the United States Environmental Protection Agency ("EPA") is authorized to assess administrative penalties against persons who violated Section 301(a) of the Act, 33 U.S.C. § 1311(a). The Administrator of EPA has delegated this authority to the Regional Administrator of EPA, Region III, who in turn has delegated this authority to the Water Protection Division Director ("Complainant").

2. Pursuant to Section 309(g) of the Act, 33 U.S.C. § 1319(g), and in accordance with the enclosed *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits* ("Consolidated Rules"), 40 C.F.R. Part 22, Complainant hereby proposes to assess a civil penalty in the amount of \$37,500 (thirty-seven thousand five hundred dollars) against Charles County ("Respondent") for violation(s) of Section 301 of the CWA, 33 U.S.C. § 1311.

**II. FACTUAL AND LEGAL ALLEGATIONS**

3. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant (other than dredged or fill material) from a point source into waters of the United States except in compliance with a permit issued pursuant to the National

14. The term MS4 includes, "a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains) owned or operated by a State, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under State law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the CWA that discharges to waters of the United States." 40 C.F.R. § 122.26(b)(8)(i).
15. An NPDES permit is required for discharges from an MS4 serving a population of 100,000 or more, Section 402(p)(2) of the Act, 33 U.S.C. § 1342(p)(2); 40 C.F.R. § 122.26(a), 40 C.F.R. § 122.21.
16. Respondent's MS4 serves a population of at least 100,000 people.
17. Pursuant to Section 402(b) of the Act, 33 U.S.C. § 1342(b), EPA authorized the Maryland Department of the Environment ("MDE") to issue NPDES permits on September 5, 1974.
18. MDE issued to Respondent an NPDES MS4 Discharge Permit (No. MD 0068365) which became effective on July 31, 2002 (hereinafter the "MS4 Permit") and was applicable to the County development district.
19. The expiration date of the MS4 Permit was July 31, 2007; however, the MS4 Permit has been administratively extended.
20. An NPDES permit is also required for discharges of storm water associated with industrial activity, as well as for stormwater discharges which MDE or EPA determine to be a significant contributor of pollutants or that contributes to a violation of a water quality standard. Section 402(p)(2) of the Act, 33 U.S.C. § 1342(p)(2); 40 C.F.R. § 122.26(a), 40 C.F.R. § 122.21.
21. On June 25 and 26, 2013, a compliance inspection team comprised of EPA and authorized representatives of EPA reviewed Respondent's MS4 program (the "MS4 Inspection").
22. In September 2013, EPA issued the Charles County Municipal Separate Storm Sewer System (MS4) Program Inspection Report ("Inspection Report").
23. The County received a copy of the Inspection Report on October 28, 2013, and prepared and submitted a response to EPA on December 27, 2013.
24. Based upon the June 25 and 26, 2013 review and Respondent's responses thereto, EPA identified the following violation of the MS4 Permit and Section 301 of the

issue of an inability to pay and demonstrating this fact rests with the Respondent. In addition, to the extent that facts or circumstances unknown to Complainant at the time of issuance of the Complaint become known after issuance of the Complaint, such facts and circumstances may also be considered as a basis for adjusting the proposed civil penalty assessed in the Complaint.

#### **V. SETTLEMENT CONFERENCE**

32. EPA encourages settlement of proceedings at any time after issuance of a Complaint if such settlement is consistent with the provisions and objectives of the SDWA. Whether or not a hearing is requested, the Respondent may request a settlement conference to discuss the allegations of the Complaint and the amount of the proposed civil penalty. However, a request for a settlement conference does not relieve the Respondent of the responsibility to file a timely Answer to the Complaint.

33. In the event settlement is reached, its terms shall be expressed in a written Consent Agreement prepared by Complainant, signed by the parties, and incorporated into a Final Order signed by the Regional Administrator or his designee. The execution of such a Consent Agreement shall constitute a waiver of Respondent's right to contest the allegations of the Complaint or to appeal the Final Order accompanying the Consent Agreement.

34. If you wish to arrange a settlement conference or if you have any questions related to this proceeding, please contact the attorney assigned to this case, as indicated in Section VI, following your receipt of this Complaint. Such a request for a settlement conference does not relieve the Respondent of the responsibility to file an Answer within 30 days following Respondent's receipt of this Complaint.

#### **VI. NOTICE OF OPPORTUNITY TO REQUEST A HEARING**

35. As provided in section 1319(g)(2)(B) of the Act, 33 U.S.C. § 309(g)(2)(B), the Respondent has the right to a hearing on the record regarding this Complaint to contest any material fact contained in this Complaint, or to contest the appropriateness of the amount of the proposed penalty.

36. Hearing procedures are described in the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation, Termination or Suspension of Permits, 40 C.F.R. Part 22, a copy of which is enclosed.

37. If the Respondent wishes to avoid being found in default, it must file a written Answer to this Complaint and a Request for Hearing with the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region III, within 30 (thirty) days of service of this Complaint. The Answer must clearly and directly admit, deny or explain each of the factual allegations contained in the Complaint with regard to which Respondent has any knowledge. Where Respondent has no knowledge of a particular factual allegation and so states, the allegation is deemed denied.



42. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. Part 13.11, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest will herefore begin to accrue on any unpaid amount if it is not paid within thirty (30) calendar days of Respondent's receipt of notice of filing of an approved copy of an Order assessing Administrative Penalties with the Regional Hearing Clerk. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. Part 13.11(a). Moreover, the costs of the Agency's administrative handling of overdue debts, based on either actual or average cost incurred, will be charged on all debts. 40 C.F.R. Part 13.11(b). In addition, a penalty will be assessed on any portion of the debt which remains delinquent more than ninety (90) calendar days after payment is due. 40 C.F.R. Part 13.11(c). Should assessment of the penalty charge of the debt be required, it will be assessed as of the first day payment is due pursuant to 4 C.F.R. Part 102.13(e). Furthermore, pursuant to EPA Resources Management Directives System, Chapter 9, EPA will assess a \$15.00 handling charge for administrative costs on unpaid penalties for the first 30-day period after a payment is due and an additional \$15.00 for each subsequent 30 days the penalty remains unpaid.

43. Neither assessment nor payment of an administrative civil penalty pursuant to Section 309(g)(2)(B) of the Act, 33 U.S.C. § 1319(g)(2)(B), shall affect Respondent's continuing obligation to comply with the CWA, any other Federal or State laws, and with any Compliance Order issued pursuant to Section 309(a) of the Act, 33 § 1319(a).

## **VII. QUICK RESOLUTION**

44. In accordance with 40 C.F.R. § 22.18(a) Respondent may resolve this proceeding at any time by paying the specific penalty proposed in this Complaint.

45. If Respondent pays the specific penalty proposed in this Complaint within thirty (30) days of receiving this Complaint, then, pursuant to 40 C.F.R. § 22.18(a)(1), no Answer need be filed.

46. If Respondent wishes to resolve this proceeding by paying the penalty proposed in this Complaint instead of filing an Answer, but needs additional time to pay the penalty, pursuant to 40 C.F.R. § 22.18(a)(2), Respondent may file a written statement with the Regional Hearing Clerk within 30 days after receiving this Complaint stating that Respondent agrees to pay the proposed penalty in accordance with 40 C.F.R. § 22.18(a)(1). Such written statement need not contain any response to, or admission of, the allegations in the Complaint. Such statement shall be filed with the following:

Regional Hearing Clerk (3RC00)  
U.S. EPA, Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029

and a copy shall be provided to:

b. Via wire transfer, sent to:

Federal Reserve Bank of New York  
ABA: 021030004  
Account Number: 68010727  
SWIFT address: FRNYUS33  
33 Liberty Street  
New York, NY 10045  
Attn: "D 68010727 Environmental Protection Agency"

c. Via ACH (Automated Clearing House) for receiving U.S. currency, sent to:

US Treasury REX/Cashlink ACH Receiver  
ABA: 051036706  
Account Number: 310006, Environmental Protection Agency  
CTX Format Transaction Code 22 – checking  
Finance Center Contacts:  
1) Jesse White: 301-887-6548  
2) John Schmid: 202-874-7026  
3) REX (Remittance Express) 866-234-5681

At the same time payment is made, copies of the check and/or proof of payment via wire transfer or ACH shall be mailed to:

Regional Hearing Clerk (3RC00)  
U.S. EPA, Region III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029

and to:

Mr. Andrew Duchovnay (3RC20)  
Senior Assistant Regional Counsel  
U.S. EPA, Region III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029.

**VIII. SEPARATION OF FUNCTIONS AND EX PARTE COMMUNICATIONS**

50. The following Agency offices, and the staffs thereof, are designated as the trial staff to represent the Agency as a party in this case: the Region III Office of Regional Counsel, the Region III Water Protection Division, the Office of the EPA Assistant Administrator for the Office of Water, and the EPA Assistant Administrator for Enforcement and Compliance Assurance. From the date of this Complaint until the final agency decision in this case, neither the Administrator, members of the Environmental Appeals Board, Presiding Officer, Regional Administrator, nor the Regional Judicial Officer, may have an *ex parte* communication with the

In Re: Charles County,  
Docket No. CWA-03-2015-0013

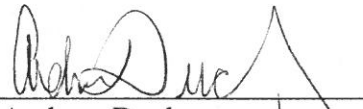
CERTIFICATE OF SERVICE

I certify that on this date I caused to be sent by UPS, a copy of this  
"Administrative Complaint and Opportunity to Request a Hearing" to the following  
persons:

Mr. Mark Belton  
Administrator  
Charles County  
200 Baltimore Street  
La Plata, Maryland 20646

Date:

October 14, 2014

  
\_\_\_\_\_  
Andrew Duchovnay  
Sr. Asst. Regional Counsel